

CAROL LEE HATCH

IBLA 79-369

79-409

Decided January 8, 1980

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, N-20681, in part, and offers, N-20682 and N-20683, in their entirety.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

2. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject To -- Wildlife Refuges and Projects: Generally

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

APPEARANCES: Hugh C. Garner, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On September 7, 1978, Carol Lee Hatch filed three oil and gas lease offers, N-20681, N-20682, and N-20683, for certain lands in Clark County, Nevada. In two separate decisions each dated April 13,

[*5] 1979, the Nevada State Office, Bureau of Land Management (BLM), rejected lease offer N-20681 in part and lease offers N-20682 and N-20683 in their entirety. 1/ Appellant has appealed both decisions and by order of this Board dated May 29, 1979, the appeals were consolidated for review.

Both BLM decisions gave the following reason for the rejections:

The lands in your offers lie within the boundaries of the National Desert Wildlife Range. According to the Department of the Interior Sacramento Regional Solicitor's office in a memorandum dated March 22, 1979, the Range has been withdrawn for the specific purpose of "the protection, enhancement and maintenance of wildlife resources, including bighorn sheep."

"43 CFR 3101.3-3(a) * * * provides that lands withdrawn for the sole purpose of protecting all species of wildlife in a particular area are wildlife refuge lands * * *." Wildlife refuge lands are specifically exempt from oil and gas leasing under 43 CFR 3101.3-3(a) except when these lands are subject to drainage and in those instances, leases will be offered only under competitive bidding. 2/

1/ N-20681 was rejected as to sec. 13 and the E 1/2 of sec. 14 of T. 18 S, R. 62 E, Mount Diablo meridian.

N-20682 covers the E 1/2 of sec. 22, sec. 23, 24, the W 1/2 of sec. 25 and sec. 26 of T. 18 S, R. 62 E, Mount Diablo meridian.

N-20683 covers sec. 27 and the E 1/2 of sec. 28 of T. 18 S., R. 62 E, Mount Diablo meridian.

2/ The cited regulation reads as follows:

"§ 3101.3-3 Reserved and segregated lands.

"(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

"(1) Leasing. No offers for oil and gas leases covering wildlife refuge land will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director."

Section 3101.3-1 involves lands subject to drainage.

The Desert National Wildlife Range was created by Public Land Order No. (PLO) 4079 (31 FR 11547 (Sept. 1, 1966), as amended by 31 FR 12564 (Sept. 23, 1966)). PLO 4079 specifies that T. 18 S, R. 62 E, Mount Diablo meridian, within which the lands in appellant's offers lie, is withdrawn for the purpose of this wildlife range (31 FR 12564 (Sept. 23, 1966)).

Appellant argues that the regulations cited by BLM go beyond the authority granted to the Secretary of the Interior by statutes governing management of Federal wildlife refuges and mineral leasing. Specifically, appellant points out that both PLO 4079 and the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. § 668dd (1976), expressly provide that the lands involved in this case were not withdrawn for the purposes of mineral leasing. ^{3/} She contends that the decision whether to grant an oil and gas lease, must rest on the criterion of compatibility with the purposes for which the wildlife lands were withdrawn under 16 U.S.C. § 668dd(d) and concludes that the regulations at 43 CFR 3101.3-3 are unreasonable and should be declared null and void.

[1, 2] We considered a nearly identical situation in T. R. Young, Jr., 20 IBLA 333 (1975). In that case, an oil and gas lease offer was rejected pursuant to 43 CFR 3101.3-3(a)(1) because the lands involved were withdrawn for waterfowl production areas. We noted that the withdrawal authority was separate from the Secretary's discretionary authority under the mineral leasing laws and found that, even though the lands at issue were not withdrawn from oil and gas leasing, the Secretary could still exercise that discretionary authority not to accept lease offers for those lands. Specifically, we held:

Under the provisions of the Mineral Leasing Act of 1920, and amendment thereto, 30 U.S.C. § 181 et seq. (1970), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas deposits "may be leased by the Secretary." (Emphasis added) 30 U.S.C. § 226(a) (1970). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the

^{3/} Public Land Order No. 4079 provides that certain public lands including T. 18 S, R. 62 E, Mount Diablo meridian, are "withdrawn from all forms of appropriation under the public land laws but not from location under the mining laws * * * nor leasing under the mineral leasing laws, and reserved as the Desert National Wildlife Range * * *."

The National Wildlife Refuge System Administration Act indicates "[t]hat the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to [the effective date of the Act], unless subsequently withdrawn under other authority of law." 16 U.S.C. § 668dd(c) (1976).

Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-5 (D.C. Cir. 1960); E. L. Lockhart, 12 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id. The general prohibition against oil and gas leasing contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under section 17 of the Act. Richard K. Todd, 68 I.D. 291, 296 (1961), aff'd sub nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); George N. Keyston, Jr., Newton H. Neustadter, Jr., A-28350, A-28528 (Aug. 7, 1962).

We recently reaffirmed this analysis in Kenneth F. Cummins, 43 IBLA 110 (1979), which held that lands within the Desert National Wildlife Range are not subject to noncompetitive oil and gas leasing. In that case, the appellant also argued that the compatibility criterion had not been met. The regulations at 43 CFR 3101.3-3(a) are a formal exercise of the Secretary's discretion. We cannot say that they are contrary to the statutes cited by appellant. Under the plain language of those regulations, the rejection of the subject oil and gas lease offers must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

